

REMARKS

Claim Amendments

Claims 26-34 and 42-51 are pending. New claim 52 has been added.

Claims 26, 33 and 47 have been amended to correct obvious typographical errors and improve the grammar. Claim 52 finds support in claim 26 prior to amendment, and simply indicates that the amendments to claim 26 do not alter the scope of the claim.

No new matter has been added

Withdrawn Objections and/or Rejections

Applicants acknowledge with appreciation the Examiner's withdrawal of the rejections under 35 U.S.C. § 112, first paragraph, enablement and written description, and second paragraph.

Double Patenting

Claims 26-34 are provisionally rejected under obviousness-type double patenting as unpatentable over claims 32-66 of co-pending Application No. 10/966,845 in view of Franklin (Biochem. Pharmacol. 49(3):267-273 (1995)).

A Terminal Disclaimer of the instant application was filed in Application No. 10/966,845 on March 12, 2009 (copy attached), thereby obviating the rejection. Withdrawal of the rejection is respectfully requested.

Objection to Claims 26, 33 and 42-54

Claim 26 is objected to for a misspelling of "disease;" the error has been corrected. The Examiner also suggests amending claim 26 to improve the grammatical form of the claim and to add a new dependent claim; these amendments have been made. Applicants note that these amendments are not intended to alter the scope of the claims and instead simply improves the grammar. Applicants thank the Examiner for her suggestions on improving the form of the claims.

Claim 33 is objected to for reciting "which occurs as one" instead of "which occurs at one;" the error has been corrected.

Claim 43 is objected to under 37 CFR § 1.75 as being a substantial duplicate of claim 42. Applicants respectfully disagree. Claim 42 is broader in scope than claim 43, because it encompasses both naturally-occurring and recombinant substances, whereas claim 43 encompasses only recombinant substances. As noted in paragraph [0102] of the application as published, “[t]he cell may be a naturally producing osteoprotegrin and/or a transfected cell that produces recombinant osteoprotegrin.” These claims are consistent with the election made in the Restriction Requirement, because the patient is treated with a polypeptide obtained from isolated cells, not a nucleic acid.

Claims 42-51 are objected to for depending from a rejected claim. As discussed above, the base claim for claims 42-51 is patentable.

In view of the above comments, reconsideration and withdrawal of the objections are respectfully requested.

CONCLUSION

In view of the above amendments and remarks, Applicants believe that the pending application is in condition for allowance.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. SLII-P01-001, from which the undersigned is authorized to draw.

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Respectfully submitted,

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